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HOUSE BILL 318

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Luciano "Lucky" Varela

AN ACT

RELATING TO HOMELAND SECURITY AND EMERGENCY MANAGEMENT;
CHANGING THE TITLE OF THE STATE DIRECTOR OF HOMELAND SECURITY
AND EMERGENCY MANAGEMENT; MAKING THE HOMELAND SECURITY AND
EMERGENCY MANAGEMENT DEPARTMENT A CABINET DEPARTMENT;
DESIGNATING THE HOMELAND SECURITY AND EMERGENCY MANAGEMENT
DEPARTMENT TO COORDINATE THE NATIONAL FLOOD INSURANCE PROGRAM;
REMOVING HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT
VEHICLES FROM THE CUSTODY OF THE TRANSPORTATION SERVICES
DIVISION OF THE GENERAL SERVICES DEPARTMENT; DECLARING AN
EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 3-18-7 NMSA 1978 (being Laws 1975,
Chapter 14, Section 1, as amended) is amended to read:

"3-18-7. ADDITIONAL COUNTY AND MUNICIPAL POWERS--FLOOD

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1 AND MUDSLIDE HAZARD AREAS--FLOOD PLAIN PERMITS--LAND USE
2 CONTROL--JURISDICTION--AGREEMENT.--

3 A. For the purpose of minimizing or eliminating
4 damage from floods or mudslides in federal emergency management
5 agency and locally designated flood-prone areas and for the
6 purpose of promoting health, safety and the general welfare, a
7 county or municipality with identified flood or mudslide hazard
8 areas shall by ordinance:

9 (1) designate and regulate flood plain areas
10 having special flood or mudslide hazards;

11 (2) prescribe standards for constructing,
12 altering, installing or repairing buildings and other
13 improvements under a permit system within a designated flood or
14 mudslide hazard area;

15 (3) require review by the local flood plain
16 manager for development within a designated flood or mudslide
17 hazard area; provided that final decisions are approved by the
18 local governing body;

19 (4) review subdivision proposals and other new
20 developments within a designated flood or mudslide hazard area
21 to ensure that:

22 (a) all such proposals are consistent
23 with the need to minimize flood damage;

24 (b) all public utilities and facilities
25 such as sewer, gas, electrical and water systems are designed

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1 to minimize or eliminate flood damage; and

2 (c) adequate drainage is provided so as
3 to reduce exposure to flood hazards;

4 (5) require new or replacement water supply
5 systems or sanitary sewage systems within a designated flood or
6 mudslide hazard area to be designed to minimize or eliminate
7 infiltration of flood waters into the systems and discharges
8 from the systems into flood waters and require on-site waste
9 disposal systems to be located so as to avoid impairment of
10 them or contamination from them during flooding; and

11 (6) designate and regulate floodways for the
12 passage of flood waters.

13 B. A flood plain ordinance adopted pursuant to this
14 section shall substantially conform to the minimum standards
15 prescribed by the federal insurance administration, regulation
16 1910 issued pursuant to Subsection 7(d), 79 Stat. 670, Section
17 1361, 82 Stat. 587 and 82 Stat. 575, all as amended.

18 C. A county or municipality that enacts a flood
19 plain ordinance shall designate a person, certified pursuant to
20 the state-certified flood plain manager program, as the flood
21 plain manager to administer the flood plain ordinance.

22 D. A county or municipality that has areas
23 designated by the federal emergency management agency and the
24 county or municipality as flood-prone shall participate in the
25 national flood insurance program.

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1 E. A county or municipality shall have exclusive
2 jurisdiction over flood plain permits issued under its
3 respective flood plain ordinance in accordance with this
4 section and so long as all structures built in flood plains are
5 subject to inspection and approval pursuant to the Construction
6 Industries Licensing Act. Notwithstanding Section 3-18-6 NMSA
7 1978, when a municipality adopts a flood plain ordinance
8 pursuant to Paragraph (2) of Subsection A of this section, the
9 municipality's jurisdiction under the flood plain ordinance may
10 take precedence over a respective county flood plain ordinance
11 within the municipality's boundary and within the
12 municipality's subdividing and platting jurisdiction.

13 F. A county or municipality shall designate flood
14 plain areas having special flood or mudslide hazards in
15 substantial conformity with areas identified as flood- or
16 mudslide-prone by the federal insurance administration pursuant
17 to the national flood insurance program and may designate areas
18 as flood- or mudslide-prone that may not be so identified by
19 the federal insurance administration.

20 G. A municipality or county adopting a flood plain
21 ordinance pursuant to this section may enter into reciprocal
22 agreements with any agency of the state, other political
23 subdivisions or the federal government in order to effectively
24 carry out the provisions of this section.

25 H. The homeland security and emergency management
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1 department [~~of public safety~~] is designated as the state
2 coordinating agency for the national flood insurance program
3 and may assist counties or municipalities when requested by a
4 county or municipality to provide technical advice and
5 assistance."

6 Section 2. Section 9-28-2 NMSA 1978 (being Laws 2007,
7 Chapter 291, Section 2) is amended to read:

8 "9-28-2. PURPOSE--CRIMINAL JUSTICE LAW ENFORCEMENT
9 AGENCY.--

10 A. The purpose of the Homeland Security and
11 Emergency Management Department Act is to establish a
12 department to:

13 [~~A.~~] (1) consolidate and coordinate homeland
14 security and emergency management functions to provide
15 comprehensive and coordinated preparedness, mitigation,
16 prevention, protection, response and recovery for emergencies
17 and disasters, regardless of cause, and acts or threats of
18 terrorism;

19 [~~B.~~] (2) act as the central primary
20 coordinating agency for the state and its political
21 subdivisions in response to emergencies, disasters and acts or
22 threats of terrorism; and

23 [~~C.~~] (3) act as the conduit for federal
24 assistance and cooperation in response to emergencies,
25 disasters and acts or threats of terrorism.

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1 B. The department shall be considered a criminal
2 justice law enforcement agency in order to accomplish the
3 purposes provided in Subsection A of this section."

4 Section 3. Section 9-28-3 NMSA 1978 (being Laws 2007,
5 Chapter 291, Section 3) is amended to read:

6 "9-28-3. DEFINITIONS.--As used in the Homeland Security
7 and Emergency Management Department Act:

8 A. "department" means the homeland security and
9 emergency management department; and

10 B. [~~state director~~] secretary means the [~~state~~
11 ~~director~~] secretary of homeland security and emergency
12 management."

13 Section 4. Section 9-28-4 NMSA 1978 (being Laws 2007,
14 Chapter 291, Section 4) is amended to read:

15 "9-28-4. HOMELAND SECURITY AND EMERGENCY MANAGEMENT
16 DEPARTMENT--CREATED--POWERS AND DUTIES.--

17 A. The "homeland security and emergency management
18 department" is created in the executive branch. The department
19 is [~~not~~] a cabinet department. The chief administrative and
20 executive officer of the department is the "[~~state director~~]
21 secretary of homeland security and emergency management", who
22 shall be appointed by the governor and hold office at the
23 pleasure of the governor.

24 B. The [~~state director~~] secretary is responsible to
25 the governor for the operation of the department. It is the

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1 ~~[state director's]~~ secretary's duty to manage all operations of
2 the department and to administer and enforce the laws with
3 which the ~~[state director]~~ secretary or the department is
4 charged.

5 C. To perform the ~~[state director's]~~ secretary's
6 duties, the ~~[state director]~~ secretary has every power
7 expressly enumerated in the laws, whether granted to the ~~[state~~
8 ~~director]~~ secretary or the department or any division of the
9 department, except where authority conferred upon any division
10 is explicitly exempted from the ~~[state director's]~~ secretary's
11 authority by statute. In accordance with these provisions, the
12 ~~[state director]~~ secretary shall:

13 (1) except as otherwise provided in the
14 Homeland Security and Emergency Management Department Act,
15 exercise general supervisory and appointing authority over all
16 department employees, subject to any applicable personnel laws
17 and rules;

18 (2) delegate authority to subordinates as the
19 ~~[state director]~~ secretary deems necessary and appropriate,
20 clearly delineating such delegated authority and the
21 limitations thereto;

22 (3) organize the department into those
23 organizational units the ~~[state director]~~ secretary deems will
24 enable it to function most efficiently, subject to any
25 provisions of law requiring or establishing specific

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1 organizational units;

2 (4) within the limitations of available
3 appropriations and applicable laws, employ and fix the
4 compensation of those persons necessary to discharge the [~~state~~
5 ~~director's~~] secretary's duties;

6 (5) take administrative action by issuing
7 orders and instructions, not inconsistent with the law, to
8 ensure implementation of and compliance with the provisions of
9 law for whose administration or execution the [~~state director~~]
10 secretary is responsible and to enforce those orders and
11 instructions by appropriate administrative action or actions in
12 the courts;

13 (6) conduct research and studies that will
14 improve the operations of the department and the provision of
15 services to the residents of the state;

16 (7) provide courses of instruction and
17 practical training for employees of the department and other
18 persons involved in the administration of programs, with the
19 objective of improving the operations and efficiency of
20 administration;

21 (8) prepare an annual budget of the
22 department;

23 (9) provide cooperation, at the request of
24 heads of administratively attached agencies, in order to:

25 (a) minimize or eliminate duplication of

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1 services and jurisdictional conflicts;

2 (b) coordinate activities and resolve
3 problems of mutual concern; and

4 (c) resolve by agreement the manner and
5 extent to which the department shall provide budgeting, record-
6 keeping and related clerical assistance to administratively
7 attached agencies; and

8 (10) appoint, with the governor's consent, a
9 "director" for each division. These appointed positions are
10 exempt from the provisions of the Personnel Act. Persons
11 appointed to these positions shall serve at the pleasure of the
12 [~~state director~~] secretary.

13 D. The [~~state director~~] secretary may apply for and
14 receive, with the governor's approval, in the name of the
15 department any public or private funds, including United States
16 government funds, available to the department to carry out its
17 programs, duties or services.

18 E. The [~~state director~~] secretary may make and
19 adopt such reasonable and procedural rules as may be necessary
20 to carry out the duties of the department and its divisions.
21 No rule promulgated by the director of any division in carrying
22 out the functions and duties of the division shall be effective
23 until approved by the [~~state director~~] secretary, unless
24 otherwise provided by statute. Unless otherwise provided by
25 statute, no rule affecting any person or agency outside the

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1 department shall be adopted, amended or repealed without a
2 public hearing on the proposed action before the [~~state~~
3 ~~director~~] secretary or a hearing officer designated by the
4 [~~state director~~] secretary. The public hearing shall be held
5 in Santa Fe unless otherwise permitted by statute. Notice of
6 the subject matter of the rule, the action proposed to be
7 taken, the time and place of the hearing, the manner in which
8 interested persons may present their views and the method by
9 which copies of the proposed rule, proposed amendment or repeal
10 of an existing rule may be obtained shall be published once at
11 least thirty days prior to the hearing date in a newspaper of
12 general circulation and mailed at least thirty days prior to
13 the hearing date to all persons who have made a written request
14 for advance notice of hearing. All rules shall be filed in
15 accordance with the State Rules Act."

16 Section 5. Section 9-28-6 NMSA 1978 (being Laws 2007,
17 Chapter 291, Section 6) is amended to read:

18 "9-28-6. COOPERATION WITH FEDERAL GOVERNMENT--AUTHORITY
19 OF [~~STATE DIRECTOR~~] SECRETARY--SINGLE STATE AGENCY STATUS.--

20 A. The department is authorized to cooperate with
21 the federal government in the administration of homeland
22 security and emergency management programs in which financial
23 or other participation by the federal government is authorized
24 or mandated under state or federal laws, rules or orders. The
25 department may enter into agreements with agencies of the

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1 federal government to implement homeland security and emergency
2 management programs subject to availability of appropriated
3 state funds and any provisions of state laws applicable to such
4 agreements or participation by the state.

5 B. The governor may by appropriate order designate
6 the department as the single state agency for the
7 administration of any homeland security or emergency management
8 program when that designation is a condition of federal
9 financial or other participation in the program under
10 applicable federal law, rule or order. Whether or not a
11 federal condition exists, the governor may designate the
12 department as the single state agency for the administration of
13 any homeland security or emergency management program. No
14 designation of a single state agency under the authority
15 granted in this section shall be made in contravention of state
16 law."

17 Section 6. Section 15-8-6 NMSA 1978 (being Laws 1994,
18 Chapter 119, Section 6, as amended) is amended to read:

19 "15-8-6. STATE VEHICLES--USE--MARKINGS--STATE GOVERNMENT
20 PLATES.--

21 A. The division shall adopt rules governing the use
22 of vehicles used by state agencies, including driver
23 requirements and responsibilities, under what circumstances
24 someone can be assigned a state vehicle on a permanent or semi-
25 permanent basis and when custody of a state vehicle can be

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1 vested in another state agency.

2 B. The division may determine that it is
3 impractical to retain custody of certain state vehicles, and it
4 may provide that custody reside in another state agency in the
5 following cases:

6 (1) the state vehicle is used for emergency or
7 law enforcement purposes; or

8 (2) the state vehicle is a department of
9 transportation, energy, minerals and natural resources
10 department, [~~or~~] department of game and fish or homeland
11 security and emergency management department passenger vehicle,
12 truck or tractor or heavy road equipment.

13 C. Except as provided in Subsections E and F of
14 this section, all state vehicles shall be marked as state
15 vehicles. Each side of the vehicle shall be marked, in letters
16 not less than two inches in height, with the following
17 designation of ownership: "State of New Mexico,.....
18 Department" or "State of New Mexico Department of"
19 and naming the department using the vehicle.

20 D. Except as provided in Subsections E and F of
21 this section, all state vehicles shall have specially designed
22 government registration plates.

23 E. Only state vehicles used for legitimate
24 undercover law enforcement purposes are exempt from the
25 requirements of Subsections C and D of this section. All other

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1 state vehicles owned or in the custody of state agencies that
2 have law enforcement functions shall be marked and have state
3 government registration plates.

4 F. A state agency may seek custody of state
5 vehicles as an exception to Subsection B of this section or an
6 exemption to the provisions of Subsection C of this section by
7 making a written request to the director, specifying the
8 reasons for the proposed custody or exemption. The director
9 may approve the custody or exemption, in writing, indicating
10 the duration and any conditions of the custody or exemption."

11 Section 7. EMERGENCY.--It is necessary for the public
12 peace, health and safety that this act take effect immediately.